



**Testimony Regarding An Act Concerning Notice of a Patient's Observation Status
Raised Bill No. 5535**

March 14, 2014

I am a senior attorney with the Center for Medicare Advocacy. The Center is a private, non-profit organization headquartered in Mansfield, Connecticut and Washington, DC with offices throughout the country. At the Center we know firsthand the medical and financial ramifications of observation status and very much appreciate your attention to the problem. We strongly support the proposed bill and would like to make a few suggestions to make it stronger.

The Center provides education and legal assistance to advance fair access to Medicare and quality healthcare. We represent older and disabled people throughout Connecticut, respond to approximately 6,500 calls and emails annually, host two websites, and lead the National Medicare Advocates Alliance. The Center also provides written and electronic newsletters, myriad seminars, expert support for Connecticut's CHOICES program, and a vast array of other services on behalf of Medicare beneficiaries throughout Connecticut and the United States.

OBSERVATION STATUS IS A SERIOUS PROBLEM FOR MEDICARE BENEFICIARIES

In 2012, 1.5 million Medicare beneficiaries were admitted to the hospital on observation status rather than as inpatients. This usually means the beneficiary went to the emergency room, was assessed by the emergency room physician as too sick to return home, was admitted to the hospital, signed all the admission paperwork, donned a hospital gown and spent one, two, three, five, or even twelve nights or more in a hospital bed receiving the full array of hospital services including specialized tests and access to specialists. Unfortunately, when Medicare

beneficiaries must stay in a hospital bed for several days, they very often suffer from a condition known as "Post-Hospital Syndrome." This condition was described by Dr. Harlan M. Krumholz in the New England Journal of Medicine:

During hospitalization, patients are commonly deprived of sleep, experience disruption of normal circadian rhythm, are nourished poorly, have pain and discomfort, confront a baffling array of mentally challenging situations, receive medications that can alter cognition and physical function, and become deconditioned by bed rest or inactivity. [N Engl J Med 2013; 368:100-102 January 10, 2013 DOI: 10.1056/NEJMp1212324]

This means that following the hospitalization, patients admitted as either inpatients or on observation status for several days, regardless of diagnosis, need the kind of intensive rehabilitation generally delivered in a skilled nursing facility (nursing home). However, traditional Medicare will only pay for skilled nursing facility care if the beneficiary was admitted to a hospital as an inpatient for three consecutive nights. When a beneficiary is admitted to the hospital on observation status, she is admitted as an *outpatient* rather than an inpatient. Consequently, Medicare will not pay for her very necessary rehabilitation at the skilled nursing facility. In Connecticut, care at a skilled nursing facility can cost as much as \$15,000 per month. Many people do not have the money to pay for the necessary care. Additionally, beneficiaries put on observation status may be billed for the cost of medications they received while hospitalized and for the Part B cost sharing for all procedures received while on observation status. Moreover, Medicare Part B is an optional benefit. When Medicare beneficiaries without Part B are put on observation status, it is as if they have no insurance, they become financially responsible for all the care rendered while they were hospitalized.

A NOTICE REQUIREMENT WILL HELP CONNECTICUT RESIDENTS PLACED ON OBSERVATION STATUS

There is no federal rule requiring hospitals to notify Medicare beneficiaries that they have been admitted on observation status rather than admitted as inpatients. This means that many Connecticut residents do not find out that they were not admitted to the hospital until the time of their discharge or even after they have been admitted to a skilled nursing facility. The proposed

bill will mean that Medicare beneficiaries in Connecticut will be told within 24 hours after placement on observation status that they are on observation status and that placement on observation status may affect the cost of their medications and the availability of Medicare coverage for post-hospital skilled nursing facility care. However, the bill could be stronger.

To begin with, Medicare beneficiaries with traditional Medicare are affected by observation status very predictably. Thus the proposed notice in the bill should clearly say that if a Medicare beneficiary with traditional Medicare is put on observation status rather than admitted, the costs of her medications while hospitalized and, if needed, her post-hospital skilled nursing facility care will not be paid for by Medicare. This stronger language is necessary to alert patients that there are very real financial and healthcare access problems caused by observation status.

As written, the notice described in the bill will encourage the patient put on observation status to contact her health insurance provider or the Office of the Healthcare Advocate. Additionally, the proposed notice in the bill should encourage patients put on observation status to speak to the admitting physician about why they have been put on observation status rather than admitted. Moreover, the proposed notice should encourage patients to contact their community physicians about their hospital status. This is because placement on observation status has both financial and medical consequences.

One of the many costs associated with placement on observation status rather than inpatient status while hospitalized is the out-of-pocket cost for medications. The proposed bill would be improved if it required hospitals to allow those put on observation status to bring in medications from home and to take those medications while hospitalized. To this end, the proposed notice described in the bill should notify those put on observation status that they have a right to bring in their medications from home and that if they do, they will avoid the costs associated with receiving them from the hospital.

As was stated above, receiving a notice from the hospital that one has been put on observation status will be very helpful. As written, the bill requires that the proposed notice “be signed and dated by the patient receiving the notice or such patient’s legal guardian, conservator or other authorized representative.” Given that many patients enter the hospital with an altered mental status due to their illness, or without their reading glasses, this language would be better if it read “be signed and dated by a mentally competent patient who is able to read and comprehend the information described in the notice or such patient’s legal guardian...” Moreover, since many of Connecticut’s residents do not read English, the bill would be better if it required that the notice be rendered in the patient’s language or rendered with the assistance of a translator.

Finally, the bill would be improved if it included a financial sanction for hospital non-compliance.

CONCLUSION

The Center for Medicare Advocacy supports Raised Bill No. 5535 requiring hospitals to give notice when patients are put on observation status with the following recommendations:

1. Add clear language to the notice regarding consequences of observation status for patients with traditional Medicare.
2. Add language to the notice directing patients on observation status to speak to their admitting physicians and community physicians about their designation on observation status and its potential medical consequences post-hospitalization.
3. Require hospitals to allow patients on observation status to bring in and take medications from home to avoid significant financial burden of paying for medications administered by the hospital.
4. Add language to the proposed notice regarding patient’s right to bring in and take medications from home.

5. Add language to the proposed notice ensuring that it will be given to beneficiaries able to comprehend its contents and in a language they can understand.

Thank you for the opportunity to testify regarding this important matter.

Respectfully submitted,

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